

C O N T R A C T  
INSTALLATION AND OPERATION OF  
HARDWIRE PREEMPTION TO THE TRAFFIC SIGNAL  
AT THE INTERSECTION OF  
SAGAMORE PKWY. (FORMER US ROUTE 52) AND SALISBURY ST.  
IN WEST LAFAYETTE, TIPPECANOE COUNTY, INDIANA  
EDS No. A249-14-320946

THIS CONTRACT by and between the STATE OF INDIANA through the INDIANA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "INDOT", and CITY OF WEST LAFAYETTE, hereinafter referred to as the "CITY", through their duly authorized and undersigned officials,

W I T N E S S E T H:

WHEREAS, in the interest of public safety and convenience, the CITY has requested the installation of a hardwire signal preemption system (hardwire preemption) between its Fire Station No. 2 and the traffic signal at the Sagamore Pkwy. and Salisbury St. intersection (the intersection) in the City of West Lafayette, Tippecanoe County, Indiana; and,

WHEREAS, INDOT and the CITY deem the hardwire preemption to be beneficial to traffic at the intersection to the extent of permitting such improvement to be made on Sagamore Pkwy., an INDOT maintained street, and participating in the same under conditions as specified within this Contract;

IT IS THEREFORE AGREED BY AND BETWEEN INDOT and the CITY that such hardwire preemption shall be installed and maintained at the intersection under terms and conditions as follows:

**1. TERM OF CONTRACT**

- a. Effective date: This Contract shall become effective on the date it is signed and approved by INDOT.
- b. Termination date is the earliest of:
  1. If construction activities related to installation of the hardwire preemption permitted by this Contract have not begun at the intersection within one (1) year of the date of the approval required in Subsection 1a, this Contract shall terminate.
  2. If the hardwire preemption installed by terms and conditions of this Contract is removed, this Contract shall terminate on the date the hardwire preemption is removed.

3. If Sagamore Pkwy. in the vicinity of the intersection ceases to be a state maintained street, this Contract shall terminate on the date of relinquishment.
4. This Contract shall terminate on the date a lack of funding determination is made by the State Budget Director as provided in Section 10 of this Contract.
5. If the State determines there has been an ethics violation, this Contract shall terminate on the date notice is given to the CITY as provided in Section 7 of this Contract.

**2. DESIGN**

- a. The CITY will be responsible for the preparation of the design of the hardwire preemption in accordance with the 2014 Standard Specifications and any subsequent revisions. Specification information is available from the INDOT website at:  
<http://www.in.gov/indot>.
- b. The design plans and specifications will include, but not be limited to:
  - 1) The proposed method of accomplishing the installation.
  - 2) Details of all physical installations to be made.
  - 3) Devices mounted at the intersection to indicate to an approaching emergency vehicle operator that the green signal displayed to the approach is in response to activating the hardwire preemption.
  - 4) Automatic logging of time and date for each activation.
  - 5) The hardwire preemption shall be activated by a mechanical device that is installed at the fire station. There shall be one device. The preemption equipment shall not be activated using wireless communication such as, but not limited to, internet and cellular telephone.
- c. The CITY shall provide recommended preemption phase and timing sequences for the preemption of the signals at two intersections: the intersection of Navajo St. and Salisbury St., and the intersection of Sagamore Pkwy. and Salisbury St. Upon activation, the hardwire preemption shall, using appropriate clearance intervals, sequence the traffic signal to display to the approaching emergency vehicle a green signal. The CITY accepts the associated operational risks of preempting a traffic signal and understands that preemption will immediately terminate both the active green indication and the pedestrian clearance interval and may violate the

drivers' expectations and reduce the pedestrians' ability to clear the intersection.

- d. All hardwire preemption equipment specified shall be fully compatible with operation of the traffic signal control equipment installed at the intersection.
- e. No changes to the normal operation signal sequence or timings will be permitted without the written consent of the Crawfordsville District Traffic Engineer (the Traffic Engineer).
- f. The CITY, or its representative, shall deliver three (3) copies of the proposed plans, specifications, timings and sequences for the hardwire preemption and associated work to the Traffic Engineer for concurrence and approval as the final plan. One copy will be returned to the CITY indicating the concurrence and two copies will be retained in INDOT files.
- g. No changes to the final plan shall be made without written consent from INDOT. Approval for changes to the final plan shall be obtained from the Traffic Engineer. When approved, a change to the final plan shall be considered as if it was a part of the original final plan.
- h. Prior to final acceptance of the hardwire preemption installation at any intersection, the CITY shall deliver to the Traffic Engineer two copies of an "AS BUILT" plan for that intersection.

### **3. CONSTRUCTION**

No connection of the hardwire preemption permitted by this Contract may begin on INDOT right-of-way until this Contract is fully executed by the Attorney General of Indiana or an authorized representative.

- a. The CITY shall use equipment that is compatible with the existing traffic signal equipment at the intersection.
- b. The CITY shall provide project supervision or shall employ a Project Engineer, independent from the contractor, to provide competent and adequate engineering, testing, and inspection services to monitor the contractor's work for compliance with the final plan.
- c. The CITY, at its own expense, shall have a signal contractor, pre-qualified with INDOT, perform the installation according to the final plan and any subsequent approved revisions. The performance of the installation shall be according to all rules and regulations of INDOT and all State and Federal Laws pertaining to the use of labor. A qualified IMSA Certified Traffic Signal Electrician Level II shall

- be in responsible charge for any wiring installation and shall make all wiring connections.
- d. At least one week prior to beginning construction activities, the CITY shall schedule a preconstruction meeting at a time and place convenient to the Traffic Engineer. Representatives of the CITY shall attend the meeting. In addition, representatives of the fire department, the design consultant, the Project Supervisor/Engineer, the contractor, any subcontractors, and any affected utilities shall attend. Topics for discussion shall include but are not limited to:
    - i) the work plan;
    - ii) the traffic control plan;
    - iii) the inspection plan;
    - iv) a list of contact names with mailing addresses, telephone/fax numbers, and email addresses;
    - v) the criteria for using the preemption systems
  - e. The CITY shall notify the Traffic Engineer at least five (5) working days prior to commencing work on the installation of the preemption equipment.
  - f. The CITY shall notify the Traffic Engineer at least three (3) working days prior to the intended date to have the signal preemption connected to INDOT's controller.
  - g. All work and materials shall be in accordance with the 2014 INDOT Standard Specifications and subsequent revisions. When a category of materials or equipment specified for this installation is listed on the INDOT list of approved materials, any such materials or equipment specified for this installation shall be selected from the INDOT list of approved materials.
  - h. The installation work shall be performed in a manner and quality meeting the satisfaction and approval of INDOT with regard to proper highway engineering and planning.
  - i. During construction, INDOT may inspect the installation. INDOT will promptly notify the CITY or the Project Supervisor/Engineer, verbally or in writing, of any deficiencies. The CITY will have the contractor correct such deficiencies. The inspection by INDOT does not relieve the CITY or the Project Supervisor/Engineer of the responsibility to inspect and construct the hardwire preemption and appurtenances in accordance with the final plan and specifications as required herein.

- j. Prior to activation of the hardwire preemption, a final inspection will be required. Representatives of the Traffic Engineer will witness the inspection. The CITY may attend the inspection. The final inspection will include the actuation of the preemption system for each phase to verify proper operation to the satisfaction of the CITY and INDOT.

**4. ACCEPTANCE OF THE HARDWIRE PREEMPTION INSTALLATION**

- a. After satisfactory completion of the work as determined by a final inspection and receipt of two (2) copies of the "AS BUILT" plans as required in Section 2 of this Contract, INDOT will accept the installation of the hardwire preemption as being complete and acceptable for use.
- b. Upon acceptance of the hardwire preemption by INDOT, the hardwire preemption equipment remains the property of the CITY.

**5. RIGHTS OF ENTRY**

- a. The CITY hereby grants INDOT permission at all times to enter upon its property for the sole purposes of inspection and maintenance investigations of the hardwire preemption.
- b. INDOT grants the CITY, its contractor and subcontractors permission to enter upon the State right-of-way for the sole purpose of installing, maintaining, and removing the hardwire preemption and related construction as described in the final plan.

**6. MAINTENANCE AND OPERATIONS**

- a. The CITY shall maintain controller cabinets, connections, signal equipment, interconnect equipment, and preemption equipment for the intersection of Navajo St. and Salisbury St.
- b. INDOT will maintain controller cabinets, connections, and signal equipment for the intersection.
- c. The CITY shall be responsible for cable locates of all wiring at locations not on INDOT right-of-way.
- d. INDOT will be responsible for cable locates of wiring at locations on INDOT right-of-way.
- e. At no time shall the CITY or the CITY's contractor change any controller timings or settings contained within INDOT's controller cabinets.
- f. The hardwire preemption shall be used only by fire department trucks.

- g. Fire department trucks may only use the hardwire preemption when responding to emergency situations. The hardwire preemption shall not be used when returning from emergency responses or for non-dispatched routine daily activities.
- h. INDOT and the CITY will develop compatible timings for the initial programming of the hardwire preemption. The recommended phase and timing sequences, submitted as required in Section 2, will be a discussion point in the development of such parameters. In the event that INDOT or the CITY decides, at a future date, these timings or sequences require changes, both parties agree to notify the other and to supply a copy of the new timings and sequences. INDOT has final approval and full responsibility for timings and sequencing that are installed in an INDOT controller.
- i. The CITY shall maintain the hardwire preemption equipment. The CITY and INDOT agree that should a change of controllers or preemption equipment, which would affect system compatibility, be desired by either party, then both parties must agree to the change. If both parties do not mutually accept such change, then the preemption may be disconnected by INDOT within its controller.
- j. The CITY, or its representative, shall contact, by any means, the Traffic Engineer a minimum of two (2) hours before performing emergency maintenance on preemption equipment located in, or on, the INDOT traffic signal system equipment. An INDOT signal technician may be present during this maintenance activity.
- k. The CITY, or its representative, shall contact, by any means, the Traffic Engineer a minimum of one (1) work day before performing routine maintenance on preemption equipment located in, or on, the INDOT traffic signalsystem equipment. Routine maintenance shall not be performed on a weekend, holiday, or after normal working hours. An INDOT signal technician may be present during this maintenance activity.
- l. INDOT, through its normal procedures, will make the initial response to a reported traffic signal malfunction. If it is determined that preemption equipment is in need of maintenance, the preemption will be disconnected within the traffic controller cabinet. INDOT will notify the CITY of the preemption disconnect on the day of preemption disconnect if such notification can be made during normal

working hours, otherwise INDOT will notify the CITY on the next workday.

- m. INDOT reserves the right to disconnect the hardwire preemption, in INDOT's controller cabinet, should malfunction or operational problems be discovered which may be detrimental to the operation of the traffic signal at INDOT's intersection. INDOT will notify the CITY of the preemption disconnect on the day of preemption disconnect, if such notification can be made during normal working hours, otherwise, INDOT will notify the CITY on the next workday.
- n. In the course of emergency maintenance due to equipment knock down caused by vehicular accident or acts of nature, INDOT, or its representative, will attempt, using normal diligence, to salvage for re-use any hardwire preemption equipment that has been knocked down. INDOT will not reinstall hardwire preemption equipment. INDOT, or its representative, does not insure that any hardwire preemption equipment removed for salvage is functional. The CITY, or its representative, shall assure themselves that the equipment is functional before attempting to reinstall the equipment.
- o. If after appropriate review, INDOT determines that any preemption equipment or appurtenances installed on the highway right-of-way by terms of this Contract has become substandard, conflicts with future improvements or other necessary installations, is not being maintained, is being misused or this Contract is terminated, INDOT may order modification, relocation or removal of the hardwire preemption. The local agency will provide evidence of valid emergency runs when requested. A pre-qualified contractor employed by the CITY shall perform the removal or modification within two (2) months of notice to the CITY from INDOT.
- p. If after installation a hardwire preemption is to be removed, the CITY, at their own expense, shall have a signal contractor, pre-qualified with INDOT, perform the removal. A qualified IMSA Certified Traffic Signal Electrician Level II shall be in responsible charge for the removal work and shall make any wiring modifications. The CITY shall notify the Traffic Engineer at least five (5) working days prior to commencing work on the removal of the preemption equipment.
- q. Upon termination of this Contract or during maintenance or modernization activities on the hardwire preemption, hardwire

preemption equipment removed by the CITY will remain the property of the CITY.

**7. CITY RESPONSIBILITIES**

The CITY responsibilities shall include but are not limited to:

- a. Wherever in this contract any obligation or responsibility is assumed by the CITY, same shall be deemed an obligation of said CITY.
- b. The CITY shall perform all work permitted under this Contract to INDOT's reasonable satisfaction, as determined at the discretion of INDOT and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations.
- c. **Compliance With Laws**
  1. The CITY shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by INDOT and the CITY to determine whether the provisions of this Contract require formal modification.
  2. The CITY and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with INDOT as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the CITY is not familiar with these ethical requirements, the CITY should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the CITY or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the CITY. In addition, the CITY may be subject to penalties under IC §§ 4-2-6 and 4-2-7.
  3. The CITY certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to INDOT. The CITY agrees that any payments currently due to INDOT may be withheld from payments due to the CITY. Additionally, further work or payments may be withheld, delayed,



or denied and/or this Contract suspended until the CITY is current in its payments and has submitted proof of such payment to INDOT.

4. The CITY warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by INDOT, and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, the CITY agrees that INDOT may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
5. If a valid dispute exists as to the CITY's liability or guilt in any action initiated by INDOT or its agencies, and INDOT decides to delay, withhold, or deny work to the CITY, the CITY may request that it be allowed to continue, or receive work, without delay. The CITY must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes determined by IDOA. A determination by IDOA shall be binding on the parties.
6. Any payments that INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC § 5-17-5.
7. The CITY warrants that the CITY and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INDOT. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with INDOT.
8. The CITY affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
9. As required by IC 5-22-3-7:
  - i. the CITY and any principals of the CITY certify that (A) the CITY, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five

(365) days, even if IC 24-4.7 is preempted by federal law; and (B) the CITY will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

- ii. The CITY and any principals of the CITY certify that an affiliate or principal of the CITY and any agent acting on behalf of the CITY or on behalf of an affiliate or principal of the CITY, (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

- d. **Confidentiality of State Information** - The CITY understands and agrees that data, materials, and information disclosed to the CITY may contain confidential and protected information. The CITY covenants that data, material and information gathered, based upon or disclosed to the CITY for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of INDOT.
- e. **Indemnification** - The CITY agrees to indemnify, defend, and hold harmless INDOT, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the CITY and/or its contractors and subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the CITY.
- f. **Drug-Free Workplace Certification** - The CITY hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The CITY will give written notice to INDOT within ten (10) days after receiving actual notice that the CITY or an employee of the CITY in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with INDOT for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the CITY hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the CITY and made a part of the contract or agreement as part of the contract documents.

The CITY certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CITY's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CITY's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
3. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CITY of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying INDOT in writing within ten (10) days after receiving notice from an employee under subdivision (C) (2) above, or otherwise receiving actual notice of such conviction;

5. Within thirty (30) days after receiving notice under subdivision (C) (2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
  6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.
- g. **Non-Discrimination** - Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the CITY, its agents, contractors and subcontractors, shall not discriminate against any employee or applicant for employment in the performance of this Contract with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Contract. Acceptance of this Contract also signifies compliance with applicable Federal Laws, regulations, and Executive Orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran. The CITY understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the CITY and its contractor or subcontractor, if any, agree that if the CITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with INDOT and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CITY shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.
- h. **Status of Claims** - The CITY shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the CITY resulting from work performed under this Contract.

The CITY shall send notice of claims related to work under this Contract to:

Chief Counsel

Indiana Department of Transportation

100 North Senate Avenue, Room N758

Indianapolis, IN 46204-2249

**8. NOTICE**

- a. Except as provided in Section 6, wherever in or under this Contract notice must or may be given by INDOT to the CITY, such notice shall be deemed given when addressed to the CITY at 609 W. Navajo St., West Lafayette, IN 47906, and deposited postage paid in the U.S. Mail system of collection.
- b. Whenever the notice required in Section 6 must or may be given by INDOT to the CITY, such notice shall be deemed given when delivered verbally or in writing by direct communication or written or electronic means.
- c. Except as provided in Section 6, wherever in or under this Contract notice must or may be given by the CITY to INDOT, such notice shall be deemed given when received by the Traffic Engineer at the Crawfordsville District Office, 41 W CR 300 N, Crawfordsville, IN 47933.
- d. Whenever the notice required in Section 6 must or may be given by the CITY to INDOT, such notice shall be deemed given when delivered verbally or in writing by direct communication or written or electronic means.

**9. PAYMENTS**

As required by IC 4-13-2-14.8: Notwithstanding any other law, rule, or custom, a person or company whom has a contract with the State or submits invoices to the state for payment shall authorize in writing the direct deposit by electronic funds transfer of all payments by the state to the person or company. The written authorization must designate a financial institution and an account number to which all payments are to be credit. For forms and additional information, the CITY may visit the Auditor of State's website at <http://www.in.gov/auditor/2340.htm>.

This Contract requires no direct or indirect payments between the parties to the Contract. The parties to the Contract acknowledge that

the intangible benefits to traffic flow at the intersection are sufficient consideration.

The parties will pay costs of installing and operating the hardware preemption:

- a. To providers other than INDOT, the CITY shall pay for work needed on its property:
  - 1) Materials, equipment, and labor necessary to install, maintain, update, modify, or remove the hardware preemption as provided in Section 6.
  - 2) Materials, equipment, and labor required to reinstall the hardware preemption, after a knock-down of equipment that contains any preemption equipment permitted under this Contract.
- b. In its normal course of business, INDOT will pay costs for maintenance of the traffic signal at the intersection, except as provided in Section 6.

**10. GENERAL PROVISIONS**

- a. **Assignment** - The CITY binds its successors and assignees to all the terms and conditions of this Contract. The CITY shall not assign or subcontract the whole or any part of this Contract without INDOT's prior written consent.
- b. **Attorney General Approval** - This Contract shall not become effective unless and until approved by the Attorney General of Indiana, or an authorized representative, as to form and legality.
- c. **Debarment and Suspension** -
  1. The CITY certifies by entering into this Contract that neither it nor its principals nor any of its contractors or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of INDOT. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CITY.
  2. The CITY certifies that it has verified the state and federal suspension and debarment status for all contractors or subcontractors receiving funds under this Contract and shall be

solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor or subcontractor. The CITY shall immediately notify INDOT if any contractor or subcontractor becomes debarred or suspended, and shall, at INDOT's request, take all steps required by INDOT to terminate its contractual relationship with the contractor or subcontractor for work to be performed under this Contract.

- d. **Delay of work.** No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
- e. **Force Majeure, Suspension and Termination** - In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- f. **Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of this Contract, the Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- g. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
- h. **Headings.** Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.
- i. **Modification/Entire Contract.** This Contract may be amended from time to time hereafter only in writing executed by the parties hereto and submitted to the Indiana Attorney General for approval as to form and legality. No verbal change, modification, or amendment shall be

effective unless in writing and signed by the parties and approved by the Attorney General or his authorized representative. Except, elements of the hardwire preemption and associated work design may be added, deleted or modified in the normal course of plan review or construction field revision without submittal to the Attorney General for approval. The provisions hereof constitute the entire Contract between the parties and supersede any verbal statement, representations, or warranties, stated, or implied.

- j. **Non-Waiver.** No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
- k. **Order of Precedence.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order:
  - (1) This Contract,
  - (2) attachments prepared by INDOT,
  - (3) attachments prepared by the CITY.All of the foregoing are incorporated fully by reference.
- l. **Severability.** Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract.
- m. **Subsequent Acts.** The parties agree that they will, at any time and from time to time, from and after the execution of this Contract, upon request, perform or cause to be performed such acts, and execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such documents as may be reasonably required for the performance by the parties of any of their obligations under this Contract.
- n. **Substantial Performance.** This Contract shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.
- o. **Taxes.** The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the CITY as a result of this Contract.



- p. **Previous Contracts Superseded or Revoked.** This Contract supersedes and revokes any previous contract between said parties hereto pertaining to hardwire preemption at this intersection. Such above terms and conditions as they apply to INDOT shall remain in effect only so long as the location mentioned herein is maintained by INDOT.
- q. **Authorizations.** Any person executing this Contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this Contract on such principal's behalf.

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**Non-collusion and Acceptance.** The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this contract other than that which appears upon the face of the contract.

IN WITNESS WHEREOF, the State of Indiana, through said INDOT, and the CITY, through their undersigned officials, have hereunto affixed their signatures.

CITY OF WEST LAFAYETTE

STATE OF INDIANA  
INDIANA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
David Buck  
Public Works Director

\_\_\_\_\_  
G. Alan Plunkett  
Crawfordsville District Deputy Commissioner

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Timothy Heath  
Fire Chief

Approved:  
Department of Administration

Approved:  
State Budget Agency

\_\_\_\_\_  
Jessica Robertson, Commissioner (FOR)

\_\_\_\_\_  
Brian E. Bailey, Director (FOR)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form and Legality:

\_\_\_\_\_  
Gregory F. Zoeller  
Attorney General of Indiana

Date: \_\_\_\_\_